

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE NEW YORK TIMES COMPANY,

Plaintiffs,

v.

MICROSOFT CORPORATION, et al.,

Defendants.

Case No. 1:23-CV-11195-SHS

**DEFENDANT MICROSOFT CORPORATION'S RESPONSE TO PLAINTIFF'S
MOTION FOR LEAVE TO FILE UNDER SEAL**

Pursuant to Paragraph 22 of the Protective Order (ECF No. 127), Defendant Microsoft Corporation responds to Plaintiff New York Times Company's ("NYT") Motion for Leave to File Under Seal (ECF No. 220) filed in connection with NYT's letter motion to compel ("Letter Motion") (ECF No. 221). For the reasons stated below, Microsoft respectfully requests the Court grant Plaintiff's motion for leave to file under seal.

Specifically, Microsoft requests that the redacted material in the Letter Motion and exhibits thereto be sealed, specifically:

1. Portions of the second full paragraph on page 2 of the Letter Motion;
2. Five bullet points in the third full paragraph on page 2 of the Letter Motion;
3. Narratives to points 1-5 on page 8 Exhibit 1 (ECF No. 221-1) as illustrated by Exhibit A (public redacted version) to this response; and
4. Exhibits 2-15 (ECF Nos. 221-2 to 221-15).

Although "[t]he common law right of public access to judicial documents is firmly rooted in our nation's history," this right is not absolute and courts "must balance competing considerations against" the presumption of access." *Lugosch v. Pyramid Co. of*

Onondaga, 435 F.3d 110, 119–20 (2d Cir. 2006). “The proponent of sealing ‘must demonstrat[e] that closure is essential to preserve higher values and is narrowly tailored to serve that interest.’” *Bernstein v. Bernstein Litowitz Berger & Grossman LLP*, 814 F.3d 132, 144 (2d Cir. 2016) (quoting *In re N.Y. Times Co.*, 828 F.2d 110, 116 (2d Cir. 1987)). “[T]he presumption of public access in filings submitted in connection with discovery disputes . . . is generally somewhat lower than the presumption applied to material introduced at trial, or in connection with dispositive motions” *Brown v. Maxwell*, 929 F.3d 41, 50 (2d Cir. 2019). “[W]hile a court must still articulate specific and substantial reasons for sealing such material, the reasons usually need not be as compelling as those required to seal summary judgment filings.” *Id.*

The Letter Motion and Exhibit 1 thereto contain descriptions of confidential and highly confidential documents, the disclosure of which would unfairly prejudice Microsoft. Specifically, the redacted portions of the second full paragraph on page 2 of the Letter Motion and the narratives to points 1-5 on page 8 of Exhibit 1 describe the documents attached as Exhibits 2-6 to the Letter Motion, and the five bullet points in the third full paragraph on page 2 of the Letter Motion describe the documents attached as Exhibits 7-15 to the Letter Motion. Exhibits 2-15 to the Letter Motion, which have either been designated “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to the Protective Order, contain confidential and highly confidential information about ongoing development on Microsoft products, as well as other Microsoft proprietary information.¹ See Ex. B (Declaration of Lucky Vidmar). Microsoft requests

¹ At least Exhibits 3, 5, 6, 8, 9, 11, and 14 also contain email addresses and other personal information that should be shielded from the public.

that the requested portions of the Letter Motion and Exhibit 1 thereto are sealed from the public and Exhibits 2-15 be sealed in their entirety.

The information Microsoft seeks to redact is the type of information commonly found to warrant sealing. *See Regeneron Pharms., Inc. v. Novartis Pharma AG*, No. 1:20-CV-05502, 2021 WL 243943 (S.D.N.Y. Jan. 25, 2021) (finding that requested redactions were “narrowly tailored to protect competitive business information, including the non-public terms of [various agreements]” and concluding “that the sensitivity of this information outweighs the presumption of access”); *Louis Vuitton Malletier S.A. v. Sunny Merch. Corp.*, 97 F. Supp. 3d 485, 511 (S.D.N.Y. 2015) (citation omitted) (concluding that proposed redactions were “generally limited to specific business information and strategies, which, if revealed, ‘may provide valuable insights into a company’s current business practices that a competitor would seek to exploit.’”).

For the reasons stated above, and those set forth in the Declaration of Lucky Vidmar, Microsoft respectfully requests that the NYT’s Motion for Leave to File Under Seal (ECF No. 220) be granted in part. Specifically, Microsoft requests that the following be sealed:

1. Portions of the second full paragraph on page 2 of the Letter Motion;
2. Five bullet points in the third full paragraph on page 2 of the Letter Motion;
3. Narratives to points 1-5 on page 8 Exhibit 1 (ECF No. 221-1) as illustrated in Exhibit A (public redacted version) to this response; and
4. Exhibits 2-15 (ECF Nos. 221-2 to 221-15).

Dated: August 26, 2024

Respectfully submitted,

/s/ Jared B. Briant

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